

**CLOSING**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

**ANNETTE AGOSTINO and RUDOLPH  
AGOSTINO,**

*Plaintiffs,*

**v.**

**COSTCO WHOLESALE CORPORATION,  
et al.,**

*Defendants.*

**Civil Action No. 19-8976**

**ORDER**

**THIS MATTER** comes before the Court on plaintiffs Annette Agostino's and Rudolph Agostino's (together, "Plaintiffs") Motion to Amend the Complaint and Remand to State Court, ECF No. 4;

and it appearing that the Honorable Michael A. Hammer issued a Report and Recommendation ("R&R") on June 24, 2019, in which he recommended that the Motion be granted and this matter be remanded to the Superior Court of New Jersey, Law Division, Bergen County, ECF No. 10;

and it appearing Defendant Costco Wholesale Corporation ("Costco" or "Defendant") has filed two letters with the Court requesting leave to brief the issue of whether Daryl Hughes ("Hughes") is a dispensable party in this matter, ECF Nos. 11, 17;

and it appearing that Judge Hammer appropriately directed Defendant that, to the extent Defendant sought relief from the R&R, the proper avenue was to file an objection to the R&R, ECF Nos. 12, 18;

and it appearing that Defendant has not filed an objection to the R&R;

and it appearing that, in any event, Judge Hammer properly applied the factors laid out in Hensgens v. Deere & Co., 833 F.2d 1179, 1182 (5th Cir. 1987) in determining that Plaintiffs should be granted leave to amend their Complaint and that Hughes is a proper party to this action, R&R at 5-14; see also Brainbuilders, LLC v. Optum, Inc., No. 18-638, 2019 WL 2315389, at \*2 (D.N.J. May 31, 2019) (“While not addressed by the Third Circuit, district courts in the Circuit have adopted a flexible and equitable approach developed by the Fifth Circuit Court of Appeals in Hensgens.”) (internal quotations and citations omitted);

and for the reasons set forth in Judge Hammer’s R&R;

**IT IS** on this 7th day of November, 2019;

**ORDERED** that Judge Hammer’s R&R is **ADOPTED** and the Motion is **GRANTED**;  
and it is further

**ORDERED** that this matter is **REMANDED** to the Superior Court of New Jersey, Law Division, Bergen County.

/s/ Madeline Cox Arleo  
**Hon. Madeline Cox Arleo**  
**UNITED STATES DISTRICT JUDGE**